SUPREME COURT, U. S.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No. 761

MELVIN F. BEATY,
TO HIS OWN USE AND TO THE USE OF UNITED STATES FIDELITY & GUARANTY COMPANY, A BODY CORPORATE,
Petitioner,

v.

M. S. STEEL COMPANY, INC., A BODY CORPORATE,
Respondent.

RAYMOND A. GRAINGER,
TO HIS OWN USE AND TO THE USE OF UNITED STATES FIDELITY & GUARANTY COMPANY, A BODY CORPORATE,
Petitioner,

v.

M. S. STEEL COMPANY, INC., A BODY CORPORATE,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF IN OPPOSITION

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ARGUMENT

The Petitioners' argument in support of the contention that this Court should grant a Writ of Certiorari is founded on the proposition that due process of law compels the

Court to entertain jurisdiction over a foreign corporation even in the absence of legislation empowering it to do so.

It is clear, as the Circuit Court of Appeals held, that the facts of the case do not bring it within the statutory jurisdiction of the courts. Annotated Code of Maryland (1957), Article 75, Section 94, *et seq.* (App. 2a-3a). The petitioners do not contend to the contrary, but seek to deprive the State of all power to determine the extent to which its courts should exercise jurisdiction and to force judicial entertainment of all litigation which is constitutionally permissible. This would render the States powerless to determine the character of cases to be decided by their own courts.

The proposition that a court does not have enlarged jurisdiction in the absence of statutory enactment is made clear in the case of *Longines-Wittnauer Watch Co., Inc., v. Barnes and Reinecke Incorporated*, 15 N.Y. 2d 443, 261 N.Y.S. 2d 8, 209 N.E. 2d 68 (Court of Appeals, N.Y.) In this case the contention was made that a long *arm* statute could not be applied retroactively so as to subject a defendant to jurisdiction. The court answered this by referring to *Simonson v. International Bank*, 14 N.Y. 2d 281, 251 N.Y.S. 2d 433, 200 N.E. 2d 427, where it stated that the proposition was adopted that such a statute did have retroactive effect to the extent of "embracing suits instituted after its effective date but based on previously accrued causes of action." (This case held it did not apply to suits instituted before its effective date.)

The *Longines* cases also discussed *McGee v. International Life Insurance Company*, 355 U.S. 220, 78 S. Ct. 199, 2 L. Ed. 2d 223, and stated that in that case:

> "In upholding the retroactive application of that statute, the Supreme Court observed that such legislation is 'remedial, in the purest sense of that term, and neither enlarge(s) nor impair(s) . . . substantive rights

> or obligations', its effect being merely to provide the plaintiff with a new 'forum to enforce whatever substantive rights' he might have against the defendant."

As the opinion of the Circuit Court of Appeals (App. 16a-22a) points out, the petitioners' concept of jurisdiction being co-extensive with constitutional power has already been rejected by this court in *Perkins v. Benquet Mining Co.*, 342 U.S. 437, wherein it was stated (page 440):

> "The suggestion that federal due process *compels* the state to open its courts to such a case has no substance."

In the *Benquet* case, this court quoted from *Missouri P.R. Co. v. Clarendon Co.*, 257 U.S. 533, 535, as follows:

> "Provision for making foreign corporations subject to service in the State is a matter of legislative discretion, and a failure to provide for such service is not a denial of due process.'

The Circuit Court of Appeals in the immediate case cited *Arrowsmith v. United Press International,* 320 F. 2d 219 (2nd Cir. 1963) and remarked that Judge Friendly therein stated:

> "This conclusion that a federal district court will not assert jurisdiction over a foreign corporation in an ordinary diversity case unless that would be done by the state court under constitutionally valid state legislation in the state where the court sits, has been reached in almost every circuit that has considered the issue."

Judge Friendly in *Arrowsmith* cited cases from eight circuits. His analysis of the holdings, it is believed, is sufficiently succinct to justify its quotation as follows:

> "*First:* Pulson v. American Rolling Mill Co., supra; Waltham Precision Instr. Co. v. McDonnell Aircraft Corp., 310 F. 2d 20 (1 Cir. 1962);

Third: Partin v. Michaels Art Bronze Co., 202 F. 2d 541, 542 (3 Cir. 1953) ('So the first question which comes up in a case like the one at issue is whether the State, here Pennsylvania, has, through legislation plus the judicial application thereof, asserted jurisdiction over the defendant');

Fourth: Easterling v. Cooper Motors, Inc., 26 F.R.D. 1, 2 (M.D. N.C. 1960) ('There are two relevant North Carolina statutes dealing with jurisdiction over foreign corporations. * * * If service of process is to be sustained in this case, it must be under one of these statutes');

Fifth: Stanga v. McCormick Shipping Corp., 268 F. 2d 544, 548 (5 Cir. 1959) ('The first part is to ascertain whether the state law means to encompass the challenged service. This question — at least as to diversity cases [of] which this is one — is wholly a matter of state law'); New York times Co. v. Conner, 291 F. 2d 492 (5 Cir. 1961), judgment vacated on the basis of a changed view of state law, 310 F. 2d 133 (5 Cir. 1962);

Seventh: Canvas Fabricators, Inc. v. William E. Hooper & Sons Co., 199 F. 2d 485, 486 (7 Cir. 1952) ('The primary contested issue is whether defendant was "doing business" in the State of Illinois so as to be amenable to local process * * *. This being a diversity case, it can hardly be doubted but that the main question for decision is controlled by local law'); Reising v. Turner Aviation Corp., 166 F. Supp. 790, 796 (N.D. Ill. 1958); National Gas Appliance Corp. v. AB Electrolux, 270 F. 2d 472, 475 (7 Cir. 1959), cert. denied, 361 U.S. 959, 80 S. Ct. 584, 4 L. Ed. 2d 542 (1960); Green v. Robertshaw-Fulton Controls Co., 204 F. Supp. 117, 127-128 and n. 9 (S.D. Ind. 1962);

Eighth: Charles Keeshin, Inc. v. Gordon Johnson Co., 109 F. Supp. 939 (W.D. Ark. 1952); Hilmes v. Marlin Firearms Co., 136 F. Supp. 307-308 (D. Minn. 1955) ('where jurisdiction in a case is based solely upon diversity of citizenship, the power of the federal district court to entertain the case is dependent upon whether the case could have been brought in the state court

of the state in which the federal district court is located'); see Electrical Equipment Co. v. Daniel Hamm Drayage Co., 217 F. 2d 656, 661 (8 Cir. 1954);

Ninth: Kenny v. Alaska Airlines, Inc., 132 F. Supp. 838, 842-849 (S.D. Cal. 1955) ('Our first reference then in determining the "doing business" question, must be to the law as dec' red by the legislature and courts of the state of California'); Kesler v. Schetky Equipment Corp., 200 F. Supp. 678 (N.D. Cal. 1961), citing L. D. Reeder Contractors of Arizona v. Higgins Industries, Inc., 265 F. 2d 768, 776-79 (9 Cir. 1959);

Tenth: Steinway v. Majestic Amusement Co., 179 F. 2d 681, 684 (10 Cir. 1949), cert. denied, 339 U.S. 947, 70 S. Ct. 802, 94 L. Ed. 1362 (1950) ('we know that the Oklahoma courts have not gone so far [as the 14th Amendment permits], and we cannot now forecast that they will')."

In *Arrowsmith,* Judge Friendly pointed out that the opinion in the case of *Pulson v. American Rolling Mill Co.,* 170 F. 2d 193 (1 Cir.) was written by Judge Goodrich and concurred in by Judges Magruder and Woodbury and included in his opinion the following quote from that case:

"There are two parts to the question whether a foreign corporation can be held subject to suit within a state. The first is a question of state law: has the state provided for bringing the foreign corporation into its courts under the circumstances of the case presented? There is nothing to compel a state to exercise jurisdiction over a foreign corporation unless it chooses to do so, and the extent to which it so chooses is a matter of the law of the state as made by its legislature. If the state has purported to exercise jurisdiction over the foreign corporation, then the question may arise whether such attempt violates the due process clause or the interstate commerce clause of the federal constitution. Const. Art. 1, sec. 8, cl. 3; Amend. 14. This is a federal question and, of course, the state authorities are not controlling. But it is a question which is

not reached for decision until it is found that the State statute is broad enough to assert jurisdiction over the defendant in a particular situation."

It is thus demonstrated that the most respected authorities have unhesitatingly recognized that the question of judicial jurisdiction is a matter for determination by the particular state. The federal courts should not depart from this standard at least in the absence of a federal statute conferring the authority so to do on federal courts.

CONCLUSION

On a basis of the foregoing authorities, it is respectfully submitted that the District Court had no jurisdiction over the controversy in question and that the Petition for Certiorari, accordingly, should be denied.

Respectfully submitted,

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